

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p>		<p>FOR COURT USE ONLY</p>	
<p><input type="checkbox"/> <i>Individual appearing without attorney</i> <input type="checkbox"/> <i>Attorney for:</i></p>			
<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - _____ DIVISION</p>			
<p>In re:</p>		<p>CASE NO.:</p>	
		<p>CHAPTER:</p>	
		<p>NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR FOR ORDER CONFIRMING THAT THE AUTOMATIC STAY DOES NOT APPLY UNDER 11 U.S.C. § 362(I) (with supporting declarations) (UNLAWFUL DETAINER)</p>	
<p>Debtor(s).</p>		<p>DATE: TIME: COURTROOM:</p>	

Movant: _____

1. NOTICE IS HEREBY GIVEN to the Debtor, Debtor's attorney, and other interested parties (Responding Party) that on the above date and time and in the stated courtroom, Movant in the above-captioned matter will move this court for an Order granting relief from the automatic stay or for an order confirming that the automatic stay does not apply as to Debtor and Debtor's bankruptcy estate on the grounds set forth in the attached Motion.

☐ NOTICE IS ALSO GIVEN to the trustee as an additional Responding Party, because the Motion relates to a nonresidential property.

2. Hearing Location:

- ☐ 255 East Temple Street, Los Angeles, CA 90012
 - ☐ 21041 Burbank Boulevard, Woodland Hills, CA 91367
 - ☐ 3420 Twelfth Street, Riverside, CA 92501
 - ☐ 411 West Fourth Street, Santa Ana, CA 92701
 - ☐ 1415 State Street, Santa Barbara, CA 93101

3. ☐ a. This motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1. If you wish to oppose this motion, you must file a written response to this motion with the court and serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the above hearing and appear at the hearing of this motion.
- ☐ b. This motion is being heard on SHORTENED NOTICE. If you wish to oppose this motion, you must appear at the hearing. Any written response or evidence must be filed and served: ☐ at the hearing ☐ at least _____ days before the hearing.
- (1) ☐ An Application for Order Setting Hearing on Shortened Notice was not required (according to the calendaring procedures of the assigned judge).
- (2) ☐ An Application for Order Setting Hearing on Shortened Notice was filed per LBR 9075-1(b) and was granted by the court and such motion and order has been or is being served upon the debtor and trustee, if any.
- (3) ☐ An Application for Order Setting Hearing on Shortened Notice has been filed and remains pending. Once the court has ruled on that motion, you will be served with another notice or an order that will specify the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion.
4. You may contact the Clerk's Office or use the court's website (www.cacb.uscourts.gov) to obtain a copy of an approved court form for use in preparing your response (optional court form F 4001-1.RESPONSE), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.
5. If you fail to file a written response to the motion or fail to appear at the hearing, the court may treat such failure as a waiver of your right to oppose the motion and may grant the requested relief.

Date: _____

Respectfully submitted,

Printed name of law firm

Signature

Printed name of Individual Movant or attorney for Movant

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR FOR ORDER
CONFIRMING THAT THE AUTOMATIC STAY DOES NOT APPLY
(Unlawful Detainer)**

Movant: _____

1. **The Property at Issue:** Movant moves for relief from the automatic stay to obtain possession of the residential or nonresidential premises at the following address (Property):

Street Address:
Apt./Suite No.:
City, State, Zip Code:

The Property is: ☐ Residential ☐ Nonresidential

2. **Case History:**

- a. ☐ A voluntary ☐ An involuntary petition under chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13
was filed on (*specify date*):
- b. ☐ An Order of Conversion to chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13
was entered on (*specify date*):
- c. ☐ Plan was confirmed on (*specify date*):
- d. ☐ Other bankruptcy cases of the Debtor were pending within the year ending on the petition date. See attached declaration.
- e. ☐ Other bankruptcy cases affecting this Property have been pending within the two years ending on the petition date. See attached declaration.

3. **Grounds for Relief from Stay:** (*Check all that apply*)

- a. ☐ Pursuant to 11 U.S.C. § 362(d)(1), cause exists because, as of petition date, Debtor had no right to continued occupancy of the premises, as follows:
- (1) ☐ An unlawful detainer judgment in favor of Movant was entered prepetition.
- A. ☐ The Debtor has not filed with the petition and served on the Movant the certification required under 11 U.S.C. § 362(l)(1).
- B. ☐ The Debtor or adult dependent of Debtor has not deposited with the clerk any rent that would become due during the 30-day period after the filing of the petition.
- C. ☐ The Debtor or adult dependent of Debtor has not filed and served on the Movant the further certification required under 11 U.S.C. § 362(l)(2) that the entire monetary default that gave rise to the judgment has been cured.
- D. ☐ The Movant has filed and served an objection to the certification referenced in (a)(1)(A) and/or (a)(1)(C) above. A copy of the objection is attached hereto as Exhibit _____. A hearing on this objection is set for: _____.
- (2) ☐ An unlawful detainer proceeding was commenced prepetition.

- (3) ☐ Movant acquired title to the premises by foreclosure sale prepetition and recorded the deed within the period provided by state law for perfection.
- (4) ☐ Movant acquired title to the premises by foreclosure sale postpetition and recorded the deed within the period provided by state law for perfection.
- (5) ☐ The lease or other right of occupancy expired by its terms prepetition.
- (6) ☐ The lease has been rejected or deemed rejected by operation of law.
- (7) ☐ Lease payments have not been made since the filing of the petition.
- (8) ☐ An eviction action has been filed to obtain possession of the subject residential Property on grounds of endangerment of the property or because of illegal use of controlled substances on the Property and Movant has filed and served upon Debtor a certification that ☐ such an action was filed or ☐ that within the 30 days preceding the certification Debtor has endangered the subject Property or illegally allowed the use of controlled substances on the Property. A copy of Movant's certification is attached as Exhibit _____. Debtor ☐ has ☐ has not filed an objection to Movant's certification. A copy of Debtor's objection, if any, is attached as Exhibit _____.
A hearing on this objection is set for: _____.

- b. ☐ Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor has no equity in the Property; and pursuant to 11 U.S.C. § 362(d)(2)(B), the Property is not necessary to an effective reorganization.
- c. ☐ The bankruptcy case was filed in bad faith to delay, hinder or defraud Movant.
- (1) ☐ Movant is the only creditor or one of very few creditors listed on the master mailing matrix.
- (2) ☐ Other bankruptcy cases have been filed asserting an interest in the same Property.
- (3) ☐ The Debtor filed what is commonly referred to as a "face sheet" filing of only a few pages consisting of the Petition and a few other documents. No Schedules or Statement of Affairs (or Chapter 13 Plan, if appropriate) has been filed.

4. Evidence in Support of Motion: (*Important Note: Declaration(s) in support of the Motion MUST be attached hereto.*)

- a. Movant submits the attached Unlawful Detainer Declaration to provide evidence in support of this Motion pursuant to LBRs.
- b. Other declaration(s) are also attached in support of this Motion.

WHEREFORE, Movant prays that this court issue an order granting the following (*specify forms of relief requested*):

1. ☐ Termination of the stay to allow Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to obtain possession of the Property.
2. ☐ Annulment of the stay so that the filing of the bankruptcy petition does not affect postpetition acts, as set forth in the attached declaration(s).
3. ☐ An order confirming that the automatic stay does not apply.

4. Alternatively, if immediate relief from stay is not granted with respect to the Property because the Property is the subject of a lease that may be assumable:
- a. ☐ Establishment of a deadline for assumption or rejection of the lease.
 - b. ☐ Adequate protection in the form of regular payments at the lease rate from petition date until assumption or rejection of the lease.
5. Additional provisions requested:
- a. ☐ That the order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
 - b. ☐ Termination or modification of the co-debtor stay of 11 U.S.C. § 1201 or § 1301 as to the above-named co-debtor, on the same terms and conditions.
 - c. ☐ That the 14-day stay prescribed by FRBP 4001(a)(3) be waived.
 - d. ☐ That Extraordinary Relief be granted as set forth in the Attachment (*attach optional court form F 4001-1.EXT.RELIEF.ATTACH*).
 - e. ☐ For other relief requested, see attached continuation page.

Date: _____

Respectfully submitted,

Printed name of Movant

Printed name of attorney for Movant (if applicable)

Signature

Printed name of Individual Movant or attorney for Movant

UNLAWFUL DETAINER DECLARATION

Movant: _____

I, _____, declare as follows
(Print Name of Declarant)

1. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding Movant's interest in the residential or nonresidential real property that is the subject of this Motion (Property) because:

- ☐ I am the Movant and owner of the Property.
- ☐ I manage the Property as the authorized agent for the Movant.
- ☐ I am employed by the Movant as (*state title and capacity*):
- ☐ Other (*specify*):

2. I am one of the custodians of the books, records and files of Movant as to those books, records and files that pertain to the rental of this Property. I have personally worked on books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the acts, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the court if required.

3. The address of the Property that is the subject of this Motion is:

Street Address:
Apt./Suite No.:
City, State, Zip Code:

4. Movant is the legal owner of the Property, or the owner's legally authorized agent. A true and correct copy of the Trustee's Deed upon Sale, lease, rental agreement, or other document evidencing Movant's interest in the Property is attached as Exhibit _____. A true and correct copy of any applicable document establishing Movant's authority as agent for the owner is attached as Exhibit _____.

5. The Property is: ☐ Residential property ☐ Nonresidential property

- a. Debtor occupies the Property

- ☐ on a month-to-month tenancy ☐ pursuant to a lease that is in default
- ☐ after a foreclosure sale on: _____ ☐ other (*specify*):

- b. ☐ Debtor has failed to pay the monthly rent of \$_____ since the following date (*specify date*): _____

- c. ☐ In addition, Debtor has failed to pay other obligations under the lease, including the following (*See attached continuation page for itemization*):

(1) ☐ Common area maintenance charges

(2) ☐ Property taxes

(3) ☐ For additional obligations, see attached continuation page.

6. Debtor's bankruptcy petition in this case was filed on (*specify date*): _____

7. Procedural status (*state all that apply, and provide dates for completed steps*):

a. ☐ Movant caused a Notice to Quit to be served upon the Debtor on (*specify date*): _____
A true and correct copy of which is attached hereto as Exhibit _____.

b. ☐ Before the filing of the petition, Movant had commenced an unlawful detainer proceeding in state court and completed the following:

(1) ☐ Movant filed a Complaint for Unlawful Detainer against the Debtor on (*specify date*): _____, a true and correct copy of which is attached as Exhibit _____.

(2) ☐ Trial was held on (*specify date*): _____.

(3) ☐ An Unlawful Detainer Judgment against the Debtor was entered on the Complaint for Unlawful Detainer on (*specify date*): _____, a true and correct copy of which is attached as Exhibit _____.

(4) ☐ A Writ of Possession for the Property was issued by the state court on (*specify date*): _____, a true and correct copy of which is attached as Exhibit _____.

(5) ☐ The Debtor has not filed with the petition and served on the Movant the certification required under 11 U.S.C. § 362(l)(1).

(6) ☐ The Debtor or adult dependent of Debtor has not deposited with the clerk any rent that would become due during the 30-day period after the filing of the petition.

(7) ☐ The Debtor or adult dependent of Debtor has not filed and served on the Movant the further certification required under 11 U.S.C. § 362(l)(2) that the entire monetary default that gave rise to the judgment has been cured.

(8) ☐ Movant has filed and served an objection to Debtor's certification referenced in paragraph (5) and/or (7) above, a copy of which is attached hereto as Exhibit _____. A hearing on this objection is set for: _____.

(9) ☐ An eviction action has been filed to obtain possession of the Property on grounds of endangerment of the Property or because of illegal use of controlled substances on the Property and Movant has filed a certification that ☐ such action was filed or ☐ that Debtor has endangered the subject Property within 30 days preceding the certification or allowed the illegal use of controlled substances on the Property. A copy of Movant's certification is attached hereto as Exhibit _____. Debtor ☐ has ☐ has not filed an objection to Movant's certification. A copy of Debtor's objection, if filed, is attached hereto as Exhibit _____. A hearing on this objection is set for: _____.

c. ☐ The lease was rejected on (*specify date*) _____:

(1) ☐ by operation of law.

(2) ☐ by Order of the court.

d. ☐ The regular lease payments have not been made since the filing of the petition.

8. ☐ Debtor has no equity in the Property because Debtor does not have a lease interest that could be assumed or assigned under 11 U.S.C. § 365.

9. ☐ The Property is not necessary to an effective reorganization because (*specify*):
- a. ☐ The Property is residential and is not producing income for the Debtor.
 - b. ☐ The Property is commercial, but no reorganization is reasonably in prospect.
 - c. ☐ Other (*specify*):
10. ☐ The bankruptcy case was filed in bad faith to delay, hinder or defraud Movant.
- a. ☐ Movant is the only creditor or one of very few creditors listed on the master mailing matrix.
 - b. ☐ Other bankruptcy cases have been filed asserting an interest in the same property.
 - c. ☐ The Debtor filed what is commonly referred to as a "face sheet" filing of only a few pages consisting of the Petition and a few other documents. No Schedules or Statement of Affairs (or Chapter 13 Plan, if appropriate) has been filed.
 - d. ☐ Other (*specify*):
11. ☐ Other bankruptcy cases that have prevented Movant from recovering possession of this Property include the following:
- a. Case name:
 Case no.: Chapter:
 Date filed: Date dismissed:
 Relief from stay re this Property ☐ was ☐ was not granted.
 - b. Case name:
 Case no.: Chapter:
 Date filed: Date dismissed:
 Relief from stay re this Property ☐ was ☐ was not granted.
 - c. ☐ See attached continuation page for more information about other cases.
12. ☐ Movant seeks annulment of the automatic stay so that the filing of the bankruptcy petition does not affect any and all of the actions set forth in paragraph 7 that were taken after the filing of the bankruptcy petition in this case.
- a. ☐ These actions were taken by Movant without knowledge of the bankruptcy filing, and Movant would have been entitled to relief from stay to proceed with these actions.
 - b. ☐ Although Movant knew about the bankruptcy filing, Movant had previously obtained relief from stay to proceed with these enforcement actions in prior bankruptcy cases affecting this Property as set forth in paragraph 11 above.
 - c. ☐ For other facts justifying annulment, see attached continuation page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR FOR ORDER CONFIRMING THAT THE AUTOMATIC STAY DOES NOT APPLY UNDER 11 U.S.C. § 362(l) (with supporting declarations) (UNLAWFUL DETAINER)** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On *(date)* _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Printed Name

Signature

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.